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Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1938

No. 590

BETHLEHEM STEEL COMPANY,
Petitioner,

against

ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LIMITED,
Respondent.

No. 591

BETHLEHEM STEEL COMPANY,
Petitioner,

against

ANGLO-CONTINENTALE TREUHAND, A.G., a Liechtenstein corporation, N. V. ANGLO-CONTINENTALE TRUST MAATSCHAPPIJ (ANGLO-CONTINENTAL TRUST COMPANY), a Netherlands corporation, MONDIALE HANDELS-UND VERWALTUNGS, A.G., a Liechtenstein corporation, and HYDROPRESS HANDELS, A.G., a Liechtenstein corporation,
Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY.

PETITIONER'S BRIEF

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Supreme Court of the United States

OCTOBER TERM, 1938.

BETHLEHEM STEEL COMPANY,
Petitioner,
against
ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LIMITED,
Respondent.
No. 590

BETHLEHEM STEEL COMPANY,
Petitioner,
against
ANGLO-CONTINENTALE TREUHAND, A.G., *et al.*,
Respondents.
No. 591

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY.

PETITIONER'S BRIEF

These two cases involve the same issue. Accordingly, in the interest of convenience, only one brief is being filed. The facts in each case are hereinafter stated separately. For the purpose of distinguishing between references to the respective records, references to the record in No. 590 will be preceded by "R.", and to that in No. 591 by "Tr."

Opinions Below

No. 590

The opinion of the Court of Appeals of the State of New York (R. 70), and the dissenting opinion therein (R. 72), are unreported. The Appellate Division, First Department, wrote no opinion. The dissenting opinion therein (R. 67) is reported in 254 App. Div. 839, 840. The opinion of the Supreme Court, New York County (R. 57), is reported in 164 Misc. 498, 299 N. Y. Supp. 862.

No. 591

The *per curiam* opinion of said Court of Appeals (Tr. 109), following the opinion of the same court on the same day in No. 590, is unreported. The Appellate Division, First Department, wrote no opinion. The opinion of the Supreme Court, New York County (Tr. 86), is not reported.

Jurisdiction

No. 590

The judgment of the Supreme Court, New York County (R. 76), was entered January 13, 1939, upon the remittitur of the Court of Appeals (R. 73) filed January 12, 1939. The petition for a writ of certiorari was filed January 13, 1939, and was granted January 16, 1939 (R. 77).

The jurisdiction of this Court rests upon the provisions of Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. at L. 937 (28 U. S. C. § 344).

No. 591

The judgment of the Supreme Court, New York County (Tr. 114), was entered January 12, 1939, upon the remittitur of the Court of Appeals (Tr. 109) filed January 12, 1939. The petition for a writ of certiorari was filed January 13, 1939, and was granted January 16, 1939 (Tr. 116).

The jurisdiction of this Court rests upon the provisions of Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. at L. 937 (28 U. S. C. § 344).

Statement in No. 590

Respondent brought suit in the Supreme Court of the State of New York, New York County, to recover a judgment for $61,766.04 (R. 12) upon interest coupons (payment of which and the bonds from which detached[1] has been assumed by the petitioner) in the aggregate face amount, in dollars, of $36,375. The coupons are in the following form (with appropriate insertions in the blank spaces) (R. 12):

[1]The bonds were issued prior to June 5, 1933 (R. 7, 16).

$25.

On the first day of , 19 , unless the bond hereinafter mentioned shall have been duly called for previous redemption, LACKAWANNA STEEL COMPANY will pay to the bearer at its office or agency in the City of New York, U. S. A., TWENTY-FIVE DOLLARS, United States Gold, or in London, England, £5.2.10½ Sterling, or in Frankfort o/M. Germany, M 105, or in Amsterdam, Holland, Gl. 62, or if paid in France, Belgium or Switzerland, Fcs. 129.50, being six months' interest then due on its First Consolidated Mortgage Gold Bond, Series A, No. .....

$25 U. S. Gold
£5.2.10½ Stg. Marks 105,
Guilders, 62
Francs 129.50

J. F. HIGGINSON, Treasurer.

[REVERSE SIDE]

Payable in New York, at the Company's office, London, at Speyer Brothers, Frankfort o/M, at Lazard Speyer-Ellissen, Amsterdam, at Teixeira De Mattos Brothers, Brussels, at Societe Generale De Belgique, Basel & Zurich, at Schweizerische Kreditanstalt.

The amounts in pounds, marks, guilders and francs were calculated on the basis of gold par exchange at the time of issue.

After June 5, 1933, respondent presented its coupons (which were payable after said date) in Zurich, Switzerland, and demanded payment of 129.50 Swiss francs on each coupon, which payment was refused by petitioner (R. 32). The present suit was brought to recover the dollar value of the Swiss francs demanded. The difference of $25,391.04 between the judgment demanded in the complaint and the face dollar amounts of the coupons represents the premium on Swiss francs, in terms of dollars, resulting from the devaluation of the dollar.

Petitioner by its answer set up as a defense (R. 17) Public Resolution No. 10 of the 73d Congress, approved June 5, 1933, 48 Stat. at L. 112 (hereinafter referred to as the Joint Resolution or the Resolution), contending that under the Joint Resolution respondent's recovery on its coupons must be limited to the aggregate dollar amount specified therein. Petitioner also alleged that respondent (which is a Swiss corporation—R. 7) acquired the bonds and coupons referred to from residents of the United States, with full notice and knowledge of the Joint Resolution, and with intent to evade the application thereof (R. 17, 52).

Respondent then moved for summary judgment, which was granted only in part, *i.e.*, for the dollar face amount of the coupons (R. 5), Mr. Justice Rosenman in an elaborate opinion (164 Misc. 498, 299 N. Y. Supp. 862; R. 57) sustaining petitioner's contention that the Joint Resolution applied to the coupons in suit.

This order and judgment were affirmed by the Appellate Division (R. 66), two of five Judges dissenting; but were reversed by the Court of Appeals (R. 73), Judges Finch and Hubbs dissenting. The majority opinion of the Court of Appeals (R. 70) held the Joint Resolution inapplicable to the coupons in suit, this being the only question decided.[2] Summary judgment has accordingly been entered for $61,766.04, plus interest and costs (R. 76).

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[2]As an independent basis for its asserted right to recovery, respondent contended that the question of the applicability of the Joint Resolution was *res judicata* by reason of a prior decision at Special Term (from which no appeal was prosecuted) involving coupons appurtenant to certain of the bonds to which certain (but not all) of the coupons involved in the present suit were also appurtenant (R. 48). The Court of Appeals did not pass on this question, however.

Statement in No. 591

Respondents brought suit in the Supreme Court of New York County to recover judgment upon multiple currency coupons detached from bonds issued by petitioner prior to June 5, 1933 (Tr. 7). The coupons are in the following form (with appropriate insertions in the blank spaces) (Tr. 30):

On the first day of , 19 ,	$25.00
unless the Bond, hereinafter mentioned,	£5.2.10
shall have been called for previous re-	62.25 Guilders
demption	

BETHLEHEM STEEL COMPANY

will pay to bearer at its office, or agency, in the City of New York, U. S. A., Twenty-Five Dollars, United States Gold Coin, or in London, England, Five Pounds, Two Shillings, Ten Pence, or in Amsterdam, Holland, Sixty-Two Guilders Twenty-Five Cents, being six months interest then due on its First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bond.

$25.00 Series A No.

(signed)—B. H. JONES, Treasurer No.

As in No. 590, the amounts in pounds and guilders were calculated on the basis of gold par exchange at the time of issue.

After June 5, 1933, respondents, which are corporations of The Netherlands and of Liechtenstein (Tr. 7, 13, 18, 24), presented their respective coupons (which were payable after said date) for payment in Amsterdam and demanded payment in Dutch guilders (Tr. 45, 47, 48, 49). The petitioner refused to meet the demand; whereupon respondents brought the present suit to recover the dollar value of the Dutch guilders which they claimed should have been paid when the coupons were presented for payment (Tr. 8, 26).

The petitioner by its answer set up defenses substantially identical to those above referred to in the statement in No. 590 (Tr. 37-39); and respondents moved for summary judgment (Tr. 6). Mr. Justice Hofstadter granted such motion, with a brief memorandum (Tr. 86), in which he held the Joint Resolution inapplicable to the coupons in suit.

The Appellate Division modified the judgment below (Tr. 102), two of the five Judges dissenting; but was in turn reversed by the Court of Appeals which affirmed the judgment of the Supreme Court (Tr. 109), Judges Finch and Hubbs dissenting, in a *per curiam* opinion (Tr. 109) following the opinion of the same court on the same day in No. 590.[3] Judgment has accordingly been entered in the respondents' favor (Tr. 114).

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[3] As an independent basis for their asserted right to recovery, certain of the respondents contended in the Court of Appeals that the question of the applicability of the Joint Resolution was *res judicata* by reason of a prior decision involving different coupons from different bonds issued under a different indenture and by a different company, but this question was not raised at Special Term, nor was it passed on by the Court of Appeals.

The Statute Involved

Public Resolution, No. 10, 73d Congress, Approved June 5, 1933 (c. 48, 48 Stat. 112).

JOINT RESOLUTION

To Assure Uniform Value to the Coins and Currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every

obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of Section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

> "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues, ex-

cept that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

The Question Presented

Does the Joint Resolution apply to coupons detached from corporate bonds expressed to be alternatively payable in a fixed number of dollars in gold coin of the United States of America at New York and a fixed number of units of a foreign currency at a foreign city, so that a respondent who has demanded payment in the foreign currency is limited in recovery to the number of dollars denominated in the bond, notwithstanding the fact that the value in dollars of the number of units of the foreign currency denominated in the bond exceeds that number of dollars?

In determining this question, two undisputed facts are, in our view, of critical importance:

First, this Court relied, in upholding the constitutionality of the Joint Resolution as applied to private obligations, upon estimates made at its bar[4] to the effect that its decision would affect approximately $75,000,000,000 of corporate bonds containing "gold clauses", that is to say, would result in their being discharged in legal tender currency in the amount of dollars expressed on the face of the bonds. The alternative foreign currency bonds (involved in these and other like cases) are themselves part and parcel of that $75,000,000,000, *since they too contain "gold clauses".*

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[4] *Norman* v. *Baltimore & Ohio Railroad Co.*, 294 U. S. 240, 313.

Second, an ultimate decision in favor of the respondents will provide a method whereby the effect of the Resolution can be *destroyed* in respect of all future obligations. Future obligations may then be so drawn as to hedge against further devaluation of the dollar by incorporating provisions for alternative payment in all foreign currencies which may be expected to enjoy or obtain a premium over the dollar, of like character to the premiums here involved.

Prior Litigation of the Question Presented

Before its decision by the Court of Appeals of the State of New York, this precise question had been before three United States Circuit Courts of Appeals. The 9th Circuit Court of Appeals avoided a determination of the main question by reversing the decision of Judge Lindley, 10 Fed. Supp. 953, (which had been favorable to the respondent's view here), upon a procedural ground, *Southern Pacific Co.* v. *McAdoo,* 82 F. (2d) 121. The 2nd Circuit Court of Appeals decided in favor of the respondent's position in *Anglo-Continentale Treuhand, A. G.* v. *St. Louis Southwestern Railway Company,* 81 F. (2d) 11; and the 8th Circuit Court of Appeals expressly disagreed with it, *Guaranty Trust Company of New York* v. *Henwood,* 98 F. (2d) 160, certiorari granted, No. 384, October Term, 1938.

The question had been before the Appellate Division of the First Department of the State of New York four times. That Court in each case sustained the petitioner's position,—one Justice (of a court of four) dissenting in the first case, and two Justices (of a court of five) dissenting in the last two cases. *City Bank Farmers Trust Co.*

v. *Bethlehem Steel Co.*, 244 App. Div. 634; *Anglo-Continentale Treuhand, A. G.* v. *Southern Pacific Co.*, 251 App. Div. 803; *Zurich General Accident & Liability Insurance Company, Limited* v. *Lackawanna Steel Co.* (No. 590 herein), 254 App. Div. 839; and *Anglo-Continentale Treuhand, A. G.* v. *Bethlehem Steel Co.* (No. 591 herein), 254 App. Div. 844. The Court of Appeals in the cases now here has now reversed the Appellate Division, with two Judges (of a court of seven) dissenting.

The adverse opinion of the Court of Appeals (R. 70) is based on an expressed agreement with the opinion of the 2nd Circuit Court of Appeals in *Anglo-Continentale Treuhand, A. G.* v. *St. Louis Southwestern Railway Co.*, 81 F. (2d) 11. The same is true of the dissenting opinion in the intermediate appellate court in New York State (R. 67). But neither in the opinion of the 2nd Circuit Court of Appeals, nor in the opinions of the judges of the courts of the State of New York which have accepted it, do we find any real consideration either of the language of Public Resolution No. 10 or of its spirit, or of the decisions of this Court in *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240, and *Holyoke Water Power Company* v. *American Writing Paper Co.*, 300 U. S. 324.

On the other hand, in the able and comprehensive opinion of Mr. Justice Rosenman at Special Term in No. 590 (164 Misc. 498, 299 N. Y. Supp. 862, R. 84-92) we find a convincing discussion of the language of Public Resolution No. 10, upholding its plain applicability to multiple currency obligations. And in the equally able and comprehensive opinion of Judge Stone for the 8th Circuit Court of Appeals in *Guaranty Trust Company* v. *Henwood*, 98 F. (2d) 160 (No. 384 below), we find a full discussion of the

spirit of the Resolution as expressive of the intent of Congress, as interpreted in the light of the opinions of this Court above referred to.

Specification of Errors to Be Urged

The Court of Appeals of the State of New York erred:

1. In holding that Public Resolution No. 10 of the Seventy-third Congress, approved June 5, 1933 (c. 48, 48 Stat. 112), referred to herein as the Joint Resolution or the Resolution, is inapplicable to the coupons in suit, and in not holding to the contrary.

2. In holding that the Joint Resolution did not direct the discharge of the coupons in suit upon payment of the amount in dollars specified therein, and did not preclude recovery thereon of a premium represented by the difference between the value at the applicable exchange rate in dollars of the number of Swiss francs (in No. 590) and Dutch guilders (in No. 591) specified therein and the number of dollars specified therein, and in not holding to the contrary.

3. In reversing the judgments of the Appellate Division of the First Department and directing the entry of judgments for respondents in the amount of the value in dollars at the applicable exchange rates of the number of Swiss francs (in No. 590) and Dutch guilders (in No. 591) specified in the coupons in suit.

Summary of Argument

I.

The Language of the Resolution.

By the express terms of the Joint Resolution, all "obligations payable in money of the United States" are dischargeable upon payment in legal tender of the dollar amount stated therein. The coupons in suit are payable in so many dollars in gold coin, or alternatively, at the option of the holder, in so many Dutch guilders or Swiss francs. As such, each coupon constitutes one "obligation", with two alternative payment "provisions". The Resolution carefully distinguishes between an "obligation", *i.e.*, a bond, coupon or other agreement or contract (payable in money of the United States), and mere "provisions" for payment contained therein. It then provides that "every obligation" shall be discharged in legal tender dollars, "whether or not" containing a gold clause or other particular "provision". "Obligations" such as the coupons in suit, which contain gold clause "provisions", are, therefore, squarely within its terms.

Our construction is the only one which gives effect to every word in the Joint Resolution and assigns thereto a meaning comporting with accepted usage. It was the construction enunciated by this Court in *Norman* v. *Baltimore & Ohio Railroad Co.*, 294 U. S. 240, ("gold clauses *in* existing contracts", p. 297; "obligations *with* gold clauses", p. 313; etc.).

The contrary position (as taken by the court below) involves the absurdity that the coupons in suit never became obligations of the petitioner until the respondents

had elected, after their maturity, whether to demand payment in dollars or in foreign currency. That this conclusion would render it lawful to issue such coupons at this time, notwithstanding that they contained gold clause "provisions" of the character specifically condemned by the Joint Resolution and by the decision of this Court in *Norman* v. *Baltimore & Ohio Railroad Company*, 294 U. S. 240, further indicates the absurdity of the respondents' position.

Whether a contrary view would be taken by a foreign court, is irrelevant. The Joint Resolution provides the exclusive rule for our courts, *The Titanic*, 233 U. S. 718.

The contrary decision in the 2nd Circuit Court of Appeals, *Anglo-Continentale Treuhand* v. *St. Louis Southwestern Railway Company*, 81 F. (2d) 11, overlooked entirely the all-important sentence of the Resolution (the sentence that directs that "every obligation" SHALL BE DISCHARGED upon payment, dollar for dollar, in legal tender), and as a consequence erroneously *assumed* that the language of the Resolution was contrary to the petitioner's position. The majority opinion in the Court of Appeals below in the present case, and the dissenting opinions in the Appellate Division, contain no independent reasoning whatsoever, but simply follow the 2nd Circuit Court of Appeals in its error. To the contrary, the opinions of Judge Rosenman at Special Term in No. 590 (R. 57), and of the 8th Circuit Court of Appeals in the case now here as No. 384, *Guaranty Trust Company* v. *Henwood*, 98 F. (2d) 160, contained comprehensive and careful discussions of the Resolution and of the purposes of the Congress in adopting it, and support petitioner's position.

II.

The Spirit and Intent of the Resolution.

The construction of the Resolution to be derived from its express language, is supported by considerations of the purpose and intent of the Congress in its enactment. Cf. *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240.

Alternative provisions for payment in foreign currency abroad, if applied in our courts to yield a premium to the holder over the number of dollars expressed to be payable on the face of the same coupon, accomplish precisely the same evil sought to be accomplished by the clauses to which that effect was denied in the *Norman* case. Indeed, these very bonds in suit are a part of the $75,000,000,000 of "gold clause" bonds recognized by this Court in the *Norman* suit to have been the object of the enactment of the Joint Resolution.

A review of the economic conditions antedating the adoption of the Resolution, with particular reference to international trade and exchange, brings into relief the fact that these foreign currency payment provisions are an obstruction to the monetary policy of the Congress, even more direct than the dollar gold clause provisions to which they are an alternative.

No serious constitutional question is presented. The suggestions that the alternative foreign currency payment provisions are of rare occurrence, and that they relate to delivery of a commodity, were alike disposed of by the opinion of this Court in the *Holyoke Water Power Company* case, 300 U. S. 324, 340. This Court there dealt with a clause of rare occurrence (calling for delivery of a commodity, gold bullion), and broadly held that all such "verbal vari-

ants" alike fall within the condemnation of the Resolution, because they obstruct the exercise by the Congress of its monetary power.

ARGUMENT

I

By the express terms of the Joint Resolution, the coupons in suit are discharged upon payment dollar for dollar.

Section 1 of the Joint Resolution is made up of two clauses, (a) and (b). The pertinent provisions of clause (a) are as follows:

> "every *provision* contained in or made with respect to any obligation *which purports to give the obligee the right to require payment in gold* or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, *is declared to be against public policy;* * * *. Every obligation*, heretofore or hereafter incurred, *whether or not* any such *provision* is contained therein or made with respect thereto, *shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.* Any such provision contained in any law authorizing obligations *to be issued* by or under authority of the United States is hereby repealed * * *." [Italics ours.]

Clause (b) of the Joint Resolution reads as follows:

> "(b) As used in this resolution, the term '*obligation*' means *an obligation* (including every obligation of and to the United States, excepting *currency*) *payable in money of the United States;* and the

> term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations." [Italics ours.]

The Joint Resolution thus carefully distinguishes between an "obligation" (*i.e.*, a bond, coupon or other agreement or contract payable in money of the United States), and "provisions" for payment contained therein. See Point I, (a), *infra*.

The Joint Resolution also plainly recognizes that an obligation is "payable in money of the United States", although it contains a "provision" which gives the obligee a right to *require* payment (and is therefore alternatively payable) in something other than money of the United States, as gold bullion. "Payable" patently means "that may be, or is susceptible of being, paid". See Point I, (b), *infra*.

The key portion of the Joint Resolution, as applied to this case, is the second sentence of clause (a), which (after inserting the necessary definitions contained elsewhere in the Joint Resolution) reads as follows:

> "*Every obligation* payable in money of the United States, whether { heretofore / or / hereafter } incurred, { whether / or / not } there is contained therein or made with respect thereto any *provision* which purports to give the obligee a right to require payment in *gold* or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby,

> shall be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts." [Italics ours.]

Eliminating the "whether" and "whether or not" clauses, the Joint Resolution simply reads:

> EVERY OBLIGATION PAYABLE IN MONEY OF THE UNITED STATES SHALL BE DISCHARGED UPON PAYMENT, DOLLAR FOR DOLLAR, IN LEGAL TENDER.

The Joint Resolution, therefore, in express terms and, as we believe, without ambiguity, provides that "every obligation payable in money of the United States, shall be discharged, dollar for dollar, in that which is legal tender at the time of payment", whether or not such "obligation" contains a "provision" of the type specifically denounced by the first sentence of clause (a) or any other "provision" for an alternative mode of payment at the option of the obligor or obligee.

It was so construed in No. 590 by Mr. Justice Rosenman in his opinion at Special Term (164 Misc. 498, 500-501; R. 57).

This is the only construction which gives effect to every word in the Joint Resolution and assigns thereto a meaning comporting with accepted usage. It gives effect to the distinction which the Joint Resolution itself makes between the "obligation" (meaning, as we have said, the bond, coupon or other agreement or contract), and the "provision" or alternative provisions for payment *contained* in such obligation. It attributes to the word "payable" the meaning compelled by the context. It is the only interpretation which gives effect to the words *"whether or not* any *such*

provision [*i.e.*, such a 'provision' as is specifically declared contrary to public policy in the first sentence of clause (a)] is contained" in such "obligation."

But whether or not the Joint Resolution is to be given the above interpretation (and we recognize that that question is not squarely before the Court in this case), it *at least* provides that every "obligation" payable in money of the United States, *which contains* a "provision" specifically condemned in the first sentence of clause (a), shall be discharged, dollar for dollar, in legal tender,—regardless of whether such obligation is *also* payable in a medium other than money of the United States. The establishment of this proposition is sufficient to dispose of this case, since the coupons in suit are such obligations, containing such provisions (*i.e.*, provisions for payment in gold coin, a "particular kind of coin", or for payment in amounts "in money of the United States measured thereby").

Accordingly, we will direct our argument primarily to the establishment of such latter proposition. We have felt it proper at the outset, however, to call to the Court's attention the broader interpretation of the Joint Resolution which we believe correct, in order that our emphasis upon the narrower point involved herein be not taken as tacit acquiescence in the view that the scope of the Joint Resolution is limited to obligations containing provisions for payment specifically denounced therein.

(a) The coupons in suit are "obligations" within the meaning of the Joint Resolution.

Throughout the Joint Resolution, Congress has carefully distinguished between "obligations" and mere "provisions" for payment in obligations. The second sentence

of clause (a) affords one instance of that distinction. The same distinction is made in the next preceding sentence:

> "That (a) every *provision* contained in or made with respect to any *obligation* which purports to give the obligee a right to require payment in *gold* or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy. * * *" [Italics ours.]

and in the preamble, which refers (in the second paragraph) to "provisions of obligations". In the preamble, as in the last quoted portion of clause (a) of the Joint Resolution, the reference is primarily to the particular *provision* popularly known as the "gold clause".

In the coupons in suit there are several *provisions*, including:

> The "gold clause": "will pay * * * at its office or agency in the City of New York, U. S. A., TWENTY FIVE DOLLARS, United States Gold, * * *" (R. 12);[5]

and the alternative

> "Franc clause": "will pay * * * if paid in * * * Switzerland, Fcs. 129.50 * * *" (R. 12).[5]

Both are *provisions*, but in a single *obligation*,—the coupon itself.

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[5]The gold clause in the coupons in No. 591 is identical with that in No. 590 except that the word "Coin" follows the word "Gold" (Tr. 30). The guilder clause in the coupons in No. 591 is: "will pay * * * in Amsterdam, Holland, Sixty-two Guilders Twenty-five Cents * * *" (Tr. 30).

That the term "obligation", as employed in the Joint Resolution, is intended to denote not a "duty" or "legal liability", as hitherto suggested by respondents (and by petitioner in No. 384,—Pet. Br., pp. 74, 77), but is intended to denote, in accordance with accepted usage,[6] an "agreement" or "contract" (particularly an agreement or contract evidenced by a written instrument, as a bond, coupon, security, etc.) which is payable or dischargeable in money of the United States, is made plain by the Joint Resolution itself:

(1) It contains four references to "provisions of," and "provisions contained in" obligations. "Duties" and "legal liabilities" do not contain "provisions", but contracts and agreements (such as corporate bonds and coupons) do.

(2) The last sentence of clause (a) of the Joint Resolution refers to "obligations to be issued" by the United States. "Duties" and "legal liabilities" are not "issued", but bonds and coupons are.

(3) Clause (b) shows that the Resolution contemplates that note "currency" would be embraced by the term "obligation", unless expressly excluded therefrom. A United States, Federal Reserve, Federal Reserve bank or national bank, note is not a "duty" or "legal liability", but an agreement or contract.

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[6] Among the definitions of the term "obligation" given in Webster's New International Dictionary of the English Language (2d Ed., 1935) at page 1680, are the following:

"2. The agreement, promise, contract, oath, or the like, by which one is obligated or bound."

"8. Law. A bond with a condition annexed, and a penalty for nonfulfillment. In a larger sense, it is a formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing."

The term "provision", when used in connection with the word "obligation" in the Joint Resolution, is used to denote a clause or promise providing for payment contained in, or made with respect to, an "obligation".[7] Thus, the first sentence of clause (a) specifically denounces "every provision contained in or made with respect to any obligation which purports to give the obligee the right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby." An "obligation" may, therefore, contain one or more "provisions".

These conclusions are confirmed by the decision of this Court in *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, wherein the opinion speaks of

> "the 'gold clauses' of private contracts for the payment of money" (at p. 291);
>
> " 'gold clauses' in existing contracts" (at p. 297);
>
> "The Government's own contracts—the obligations of the United States—" (at p. 306);
>
> "obligations with gold clauses" (at p. 313); and
>
> "gold bonds" (at p. 315).[8]

Respondents have heretofore urged, and petitioner in No. 384 continues to urge (Pet. Br., pp. 77-78), that the

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[7] Both the House and Senate committee reports on the Joint Resolution use the term "provision" in this sense and speak of "gold clauses" (H. R. Rep. No. 169, 73d Cong., 1st Sess.; Sen. Rep. No. 99, 73d Cong., 1st Sess.).

[8] For other authorities demonstrating that a "bond" constitutes a prime example of an "obligation", see *Munzinger* v. *United Press*, 52 App. Div. 338, at page 341, 65 N. Y. Supp. 194, at page 196; *Exchange Bank* v. *Ford*, 7 Colo. 314, 3 Pac. 449; and *Karasik* v. *People's Trust Co.*, 252 F. 324, 335 (S. D. N. Y.), affd. without opinion 252 F. 337 (C. C. A. 2d).

fact that the Joint Resolution contemplates that "obligations" may be "incurred" renders the interpretation of that term set forth above inconsistent with the language of the Resolution. But the inconsistency is purely imaginary. The standard authority (Webster, *op. cit.*, p. 1261) states that "incur" means, *inter alia*, "to become * * * subject to" and gives "contract" as the *only* synonym. Consequently, in the context of the Joint Resolution, "obligation incurred" means "agreement contracted" or "contract to which a party has become subject."[9] *We cannot emphasize too strongly that this conclusion is compelled by the language of the Joint Resolution itself. No other interpretation is possible.*

The application herein of the term "obligation" is, therefore, clear. The coupon itself (an agreement in writing) is an "obligation" within the meaning of the Joint Resolution. And the Congressional enactment is, not that any particular *provision* therein shall be discharged "upon payment, dollar for dollar, in legal tender," but that the entire *obligation* shall be so discharged.

(b) The obligations in suit are "payable in money of the United States" within the meaning of the Joint Resolution.

The Joint Resolution is all-embracing in its terms. Its subject-matter is expressed to be *"Every* obligation payable in money of the United States."

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[9]Petitioner in No. 384 also suggests that the fact that the Joint Resolution speaks in clause (b) of "every obligation of and *to* the United States" shows that the term "obligation" means "duty" or "legal liability", but it is perfectly obvious, in the context, that the reference is to agreements and contracts [payable in money] of the United States and agreements and contracts under which the benefits run to the United States.

The coupons in suit are "obligations" which are "payable in money of the United States." True, they are *also* alternatively payable in foreign currencies. But this cannot alter the fact that they are payable in dollars. As such, they are within the Resolution.

To maintain the contrary position, respondents and the majority in the Court below (R. 70) were forced to the argument that, because the obligations are alternatively dischargeable in foreign currencies, they are *not* obligations payable in dollars. But *obviously they still are.*

At most, this argument amounts to an assertion that respondents have the option whether payment be demanded in dollars or foreign currencies. But by demanding francs or guilders, they cannot *alter* the contracts themselves. They cannot change the terms of *the obligations* (the coupons) which remain

"obligations payable in money of the United States".

The fact that, in the absence of the Joint Resolution, the respondents might require that the coupons be discharged by payment in a medium other than dollars is immaterial. The Joint Resolution by its express terms makes it plain that obligations are "payable in money of the United States", even though the obligees have the right, by the terms thereof, to require payment in another medium. It expressly includes, among "obligations payable in money of the United States", obligations which contain "provisions" which purport to give the obligee a right to require payment in "gold". An obligation alternatively dischargeable in dollars or gold bullion *at the option of the obligee* would clearly be such an "obligation payable in money of the United States."

Thus, by the express terms of the Resolution, obligations (such as the coupons in suit) which "may" be paid,—are capable or susceptible by their terms of being paid,—in dollars, are "obligations payable in money of the United States", whether or not they also include alternative provisions for payment in a different medium at the obligee's option. And this, of course, accords with common usage.[10]

Aside from the fact that the express terms of the Joint Resolution, for reasons just stated, compel a conclusion contrary to the position taken by respondents and the majority of the Court below, the logical implications of their argument demonstrate its untenability. As stated by the Court below, in the only passage of its opinion assigning any reason for its decision, the argument is as follows (R. 71):

> "* * * the obligation was not payable in 'money of the United States' but in foreign currency and therefore the Joint Resolution is not applicable. The obligation might have become payable at New York in United States money, but the fact is that it did become payable in Switzerland in Swiss currency."

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[10]Webster's New International Dictionary of the English Language (2d ed., 1935), at page 1797, defines "payable" as follows:

> "1. That *may*, can, or should be paid; justly due.
>
> "2. Likely or able to yield a profit; profitable; as, to put a business on a payable basis.
>
> "3. Law. a. That *may* be discharged or settled by delivery of value. b. That is to be paid (by any particular person); as, bills payable; also, matured or maturing; due." (Italics ours.)

The same position has been taken by the petitioner in No. 384 which summarizes its contentions as follows (Pet. Br., p. 82):

> "In conclusion, * * * the instruments upon which the present claim is based were never 'obligations payable in money of the United States' because the option to receive payment in dollars was never exercised."

It necessarily follows, however, if this argument be sound, (1) that the bonds from which the coupons in suit were detached, and the unmatured coupons appurtenant thereto, will not become "obligations" (payable in money of the United States or otherwise) of this petitioner until the options therein are exercised; and (2) *consequently, that it would not be unlawful to issue bonds and coupons of identical tenor at the present time!*

The utter absurdity of these conclusions, in the teeth of the Joint Resolution, is manifest. But they are the conclusions which flow logically and inescapably from the argument of respondents, the majority of the Court below and the petitioner in No. 384. And with their rejection, that argument must likewise be rejected.

(c) Obligations payable in money of the United States within the meaning of the Joint Resolution (such as the coupons in suit) are dischargeable, dollar for dollar, in legal tender.

Once it is established that "obligations" (such as the coupons in suit) are "payable in money of the United States" (as these coupons are), it is the mandate of Congress that they "shall be discharged upon payment, dollar

for dollar,[11] in * * * legal tender", whether or not they contain gold clauses.

The coupons in suit *do contain* gold clauses. Consequently, as previously pointed out, there is no necessity for extended argument as to whether a multiple currency obligation not containing a gold clause is within the Joint Resolution. The coupons in suit are indisputably within the Joint Resolution.

Respondents' suggestion that they be withdrawn from the application of the Joint Resolution is, in reality, an invitation to construe the same as follows:

> "Every obligation (payable in money of the United States), whether heretofore or hereafter incurred,

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[11] We understand this to mean that the obligor shall have the right to discharge the obligation by payment, dollar for dollar, in legal tender. The suggestion in the brief of petitioner in No. 384 (pp. 82, 96-97) that an obligor *must* discharge dollar for dollar, and may not pay more than the face amount of the obligation (whether for the purpose of settling litigation or otherwise), or pay less than the face amount thereof (provided the obligee is willing to accept less), is without warrant. As hereinafter pointed out in greater detail, the Resolution was adopted for the purpose, *inter alia*, of preventing that dislocation of the domestic economy which would have resulted from *forcing* obligors to pay more than the face amount of obligations payable in money of the United States, but there is nothing in the Resolution which *requires* obligors to act under the authority therein conferred.

Equally without basis is such petitioner's contention (Pet. Br., pp. 96-97) that the Resolution, if construed as we urge it should be, would affect performance of those promises not involving payment which are contained in obligations payable in money of the United States. It is perfectly apparent from the most casual reading that the second sentence of clause (a) of the Resolution deals only with payment. (See *Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U. S. 324, at p. 339.)

> which contains any such provision (*i.e.*, as is described in the first sentence of clause (a)) shall be discharged, upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public or private debts, unless such obligation shall contain an alternative provision or provisions other than those described in the first sentence of this clause (a), in which event such obligation may be discharged in accordance with such alternative provision or provisions."

In thus, in effect, suggesting (1) the substitution for the words of the Joint Resolution of other and different words, and (2) the addition thereto of words not to be found therein, respondents are requesting not construction, but amendment of the Resolution.

(d) To hold the Resolution applicable to the coupons in suit is not to give it extra-territorial effect.

It has been suggested by the respondents in the court below, and is urged by petitioner in No. 384 (see Pet. Br., pp. 61, 93), that to apply the Joint Resolution to the coupons in suit would be to give it extra-territorial effect. But this argument proceeds upon a misapprehension of our position.

We do not contend that a foreign court may not enforce the foreign currency provisions contained in these coupons in accordance with their terms. We do contend that anyone resorting to an American court to enforce these obligations is subject to the mandate of the Resolution, laying down a broad public policy, that the obligor shall have the right to discharge these obligations by payment, dollar for dollar, in legal tender. This is not to contend that the Resolution be given extra-territorial effect.

Nor is there any inconsistency between recognizing the right of a foreign court to enforce the foreign currency provisions in accordance with their terms, and maintaining the right of our courts to enforce the Joint Resolution in accordance with its terms. As stated by Mr. Justice Holmes in a similar case (*The Titanic*, 233 U. S. 718):[12]

> "It is true that the act of Congress does not control or profess to control the conduct of a British ship on the high seas. See *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 356. It is true that the foundation for a recovery upon a British tort is an obligation created by British law. But it also is true that the laws of the forum may decline *altogether* to enforce that obligation on the ground that it is contrary to the domestic policy, *or may decline to enforce it except within such limits as it may impose.* * * * The question is not whether the owner of the Titanic by this proceeding can require all claimants to come in and can cut down rights vested under English law, as against, for instance, Englishmen living in England who do not appear. It is only whether those who do see fit to sue in this country are limited in their recovery irrespective of the English law * * *" (pp. 732-733).
>
> "We see no absurdity in supposing that if the owner of the Titanic were sued in different coun-

[12] The actual decision in the cited case would seem to have been placed on the ground that the Limitation of Vessel Owners' Liability Act (R. S. 4283) prescribed the remedy available in American courts, but Mr. Justice Holmes also stated (at p. 733):

> "A law that limits a right in one case may limit a remedy in another. This statute well might be held to announce a general policy, governing both obligations that arise within the jurisdiction and suits that are brought in the courts of the United States."

tries, each having a different rule affecting the remedy there, the local rule should be applied in each case" (p. 734).[13] [Italics ours.]

Indeed, the right of the courts of the United States to refuse altogether to enforce causes of action or defenses based on foreign law, when to do so would conflict with domestic public policy, even though not expressed in legislation (as in this case), is well established. Stumberg, *Principles of Conflict of Laws* (1937), pp. 251-252; see *The Titanic, supra*, p. 732; *The Kensington*, 183 U. S. 263; *Union Trust Co.* v. *Grosman, et al.*, 245 U. S. 412.

The suggestion that the Joint Resolution should be construed to be inapplicable to the coupons in suit in order to avoid giving it extra-territorial effect is, therefore, completely without foundation.

(e) The decisions in the Court below and in *Anglo-Continentale Treuhand, A. G.* v. *St. Louis Southwestern Railway Company*, failed to give effect to the plain and unambiguous language of the Joint Resolution.

As pointed out in the Statement, the judges in both courts below who have adopted respondents' position since the opinion of Judge Learned Hand for the Second Circuit Court of Appeals in *Anglo-Continentale Treuhand* v. *St. Louis Southwestern Railway Company*, 81 F. (2d) 11, have simply accepted that opinion as correct.[14] But Judge Learned Hand's opinion had this glaring omission,—it wholly omitted to discuss the principal enacting sentence of the Resolution, viz., the second sentence of clause (a).

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[13] Cf. *Knott* v. *Botany Mills*, 179 U. S. 69.

[14] Dissenting opinion in Appellate Division, R. 67; prevailing opinion in Court of Appeals, R. 70.

It only quoted and discussed the first sentence of sub-paragraph (a), and the definition in clause (b). See 81 F. (2d) at page 12, col. 1. It put its principal weight upon the first sentence of clause (a), and went at once to the conclusion that, because gold clauses were expressed to be against public policy, neither the obligations in which they are contained, nor any of the other provisions thereof, were brought within the language of the Resolution.

A consideration of the all-important and governing sentence of clause (a),—viz. the second sentence,—shows that the proper construction of the Resolution is precisely the opposite of that *assumed* by the Second Circuit Court of Appeals. Instead of justifying the assumption (indulged by that Court) that the language of the Resolution does not apply to the present case, and, therefore, that the present case can be brought within it only by some interpretative application going beyond its express terms, the fact is that such language unambiguously covers this case, and that the respondents' effort to avoid the Resolution can only be accomplished by giving to the Resolution an "interpretation" which, in reality, requires the substitution and addition of other language.

That the petitioner in No. 384 now recognizes this problem, is borne out by the entire course of the discussion in its brief, particularly the fact that the first serious attempt at analysis of the terms of the Resolution commences at page 73 of such brief, with the argument that

> "Selected language of the Joint Resolution cannot be construed in disregard of the clear purpose of the Resolution as a whole, so as to destroy the guilder option in these bonds."

For the same reason, petitioner's counsel in No. 384 immediately preceded the last quoted argument by their discussion of the evil at which the Resolution was directed, attempting to show that it was not directed at the evil which would be represented by a decision against our position in the present case. They expected that, having established such a proposition, this Court would then be amenable to the above quoted argument to the effect that the Resolution ought to be construed in their favor, contrary to its express language.

We, of course, take precisely the opposite position. Although we agree that the express language is in our favor and should govern, we are satisfied to turn to an investigation of the Congressional purpose and to the evils at which the Resolution was aimed, for we are convinced that that investigation turns in our favor. Indeed, this was a primary ground of the decision in the Eighth Circuit Court of Appeals in No. 384. We now consider that subject.

II

The coupons in suit are within the spirit and intent of the Joint Resolution, as well as the letter thereof.

(a) The Congressional purposes in enacting the Resolution were, *inter alia:* (1) specifically to denounce every type of gold clause, and (2) to authorize the discharge, dollar for dollar in legal tender, of *every* obligation containing such a clause.

The term "gold clause" resolution, frequently applied to the Joint Resolution, is really a misnomer. The Joint Resolution is not confined in its application to, or directed

at, "gold clauses" alone, although it names them. A "gold clause" is but one of the various *provisions* of contracts payable in money of the United States which the Resolution specifically denounces.[15] Moreover, and of much greater importance, the principal enacting sentence of the Resolution (the second sentence of clause (a)) applies not to single "provisions" but to entire "obligations".

There is no doubt, however, that gold clauses *and* the obligations in which they were contained, occupied the attention of the Congress primarily at the time of the adoption of the Resolution, which constituted an integral part of a monetary program embracing, *inter alia*, the abandonment of the theretofore existing gold standard and the reduction of the gold content of the dollar. (See Point II (b), *infra*.)

The Congress realized that so-called gold clause bonds were, of all others, the instruments by means of which the business community had "by prophetic discernment" attempted to nullify any future devaluation (*Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 310, 315). They required payment of "gold value" (*ibid.*, pp. 302, 315). Consequently, an insupportable additional debt and interest burden would have resulted from devaluation had not the Joint Resolution been adopted (*ibid.*, p. 315). An estimated seventy-five billion dollars of "gold bonds" (*ibid.*, pp. 313, 315) with annual interest charges probably amount-

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[15]The provisions specifically declared to be against public policy in the first sentence of clause (a) of Section 1 of the Resolution include any provision "which purports to give the obligee the right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby". Thus, "silver coin clauses" or "Federal Reserve note clauses", etc., as well as "gold bullion", "gold coin" and "gold value" clauses, are specifically declared to be against public policy.

ing to between three and four billion dollars (*ibid.*, p. 313), the debt on which would have increased in inverse ratio to the percentage of devaluation (*ibid.*, pp. 302, 315), were outstanding.

But included in such "gold bonds", which were indisputably the subject matter of Congressional action, were the very bonds, the coupons of which are involved in this litigation.

The narrow question here presented is the extent to which Congress acted with respect to such bonds, for act it certainly did.

In attempting to answer that question to the satisfaction of the Court, we have already scrutinized with care the language of the Resolution. Viewing broadly the action taken, it is immediately apparent that Congress did not limit itself to negative action. It did not content itself with denouncing gold clauses and other provisions for payment. It acted affirmatively. It provided for discharge, but *not merely* of such clauses or any other "provisions" for payment. On the contrary, in broad and sweeping terms it provided that "every" obligation "payable in money of the United States" containing such clauses (and, indeed, whether or not such clauses were contained therein) should be discharged by payment, dollar for dollar, in legal tender. It did so with a view to affecting "all obligations within the range of the exercise of its constitutional authority" (*Norman* v. *Baltimore & Ohio R. Co., supra,* at p. 326).

Its purpose, among others, in so providing, was to *limit the measure of recovery* upon such obligations in the event of devaluation, so that the obligors should not

> "be required to pay $1.69 in [the new] currency while * * * receiving * * * their * * * prices * * * on the basis of $1 of that currency"

and thereby be exposed to that

"disparity of conditions"

which would encourage that

"dislocation of the domestic economy"

which it was also the Congressional purpose to avoid (*Norman* v. *Baltimore & Ohio R. Co., supra,* at p. 315).

The coupons in suit, and the gold bonds to which they were then attached, were, figuratively speaking, in the hands of Congress at the time of the adoption of the Resolution. Congress dealt with them. It provided for their discharge, dollar for dollar. Did it intend to provide that they should be so discharged *only if* dollars were demanded in this country in the *first* instance, but that $1.69 per dollar must be paid if the demand for dollars in this country was postponed pending an obviously futile demand for foreign currencies abroad? Was required payment in excess of the face amount any less palatable to it in the one case than in the other?

The Congress did not *purport* to draw any such refined distinction in this practical legislation.[16] Indeed, the language that it employed was quite to the point. It prescribed a certain and uniform treatment for every bond containing a gold clause that should appear. Such *bonds* should be discharged, dollar for dollar, in their face

[16]The Resolution was a practical piece of legislation designed to remove practical obstructions to the exercise of the power to regulate the value of money. Gold bonds did not, of course, in theory interpose any obstruction to devaluation of the currency. Their practical *effect*, with which the Congress was concerned, however, was such as to preclude devaluation so long as they remained enforceable in accordance with their terms.

amount. The gold clauses contained therein stamped them indelibly as instruments obstructive to the exercise of the power over the currency. No further inquiry was necessary. Certainly, the presence of alternative provisions for payment which (upon enforcement) would have the same effect, would afford no occasion for a change in the treatment prescribed.

One may search in vain, as, indeed, have respondents and petitioner in No. 384, for any evidence that the Congress intended to exclude *any* gold bond from the mandate for uniform discharge thereof set forth in the Resolution. The most that respondents may say is that Congress, while employing language sufficiently broad to include all gold bonds, did not specifically advert to the alternative foreign currency provisions therein. (See brief of petitioner in No. 384, p. 58 *et seq.*)

But that, it is most respectfully submitted, is entirely beside the mark. We do not argue that the Congress gave affirmative consideration to gold bonds containing such alternative clauses, any more than we would argue that Congress gave consideration to all the "verbal variants" of gold covenants referred to in the opinion of this Court in *Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U. S. 324, 340. Our point is that, without attempting to explore in detail the innumerable "verbal variants", Congress provided that *all* gold bonds should be discharged, dollar for dollar, in legal tender. This the Congress was privileged to do:

> "No principle of constitutional law, no dictate of fair dealing, lays a duty upon the Congress to single out for special treatment an individual or a few among the members of a common mass." (*Ibid*, at p. 341.)

We are dealing here with gold bonds which are types of a general class. To permit the enforcement of these particular gold bonds in accordance with their terms, contrary to the mandate of the Resolution, would be to sanction *pro tanto* a frustration of the statutory purpose. Even if the Resolution were ambiguous (which it is not), it could not properly be construed to permit such a result in the absence of convincing evidence of a Congressional intention to achieve such result. But, as heretofore pointed out, there is no such evidence.

We think, therefore, that the inquiry as to the construction of the Joint Resolution should properly end at this point. To pursue it further is really to conduct an inquiry on this question:

> Would Congress have created an exception to the mandate which, as actually enacted, plainly and unambiguously covers the obligations in suit, had it specifically considered such obligations in its deliberations prior to such enactment?

We pursue such inquiry in the interest of completeness, although recognizing, for reasons heretofore stated, that it is really not necessary to do so.

The answer to the question put is an emphatic negative.

(b) The legislative history of the Resolution and the conditions which gave rise to its adoption show that its sweeping language was advisedly employed and that there was no intention to except from its application gold bonds which are alternatively payable in foreign currencies.

As previously pointed out, the adoption of the Joint Resolution was a necessary concomitant of the abandon-

ment by this country of the theretofore existing gold standard and of dollar devaluation. It is appropriate, therefore, to consider briefly the causes of such abandonment and devaluation.

The gold standard has, of course, both international and domestic significance. Among its attributes from an international standpoint is the equilibrium which it creates between various currencies in terms of gold. For many years that equilibrium remained relatively undisturbed and, when one national spoke in terms of units of the currency of another, he was, in effect, speaking in terms of units of gold. This was true in 1910 and 1912 at the time of the issue of the bonds from which the coupons in suit were detached.

Commencing in the year 1929 and with increasing frequency thereafter, however, that equilibrium was disturbed by a series of shocks resulting from one country after another going off the gold standard or adopting foreign exchange controls equivalent thereto.

The prevailing cause for this action was inability or prospective inability to export sufficient goods and services to balance the sum of imports and foreign debt obligations. Accordingly, each such country sought to increase its exports by depreciating its currency, in which its merchants paid for labor and raw materials, and thus enabling them to sell their products in foreign countries at prices lower in terms of foreign currencies.[17] This almost immediately resulted in increased foreign sales at the expense of mer-

[17]The general experience in the case of such devaluations has been that the domestic price level does not immediately rise in anything approaching an inverse ratio to the percentage of devaluation of the currency in terms of gold.

chants of those countries which remained upon the gold standard.

The first great collapse was that of Austria in the Spring of 1931, and then followed the German collapse in the Summer of 1931. This placed a tremendous pressure on England, whose economic life-blood depended on an active foreign trade. In September of 1931 England likewise abandoned the gold standard, in order to be able to cut its prices and protect its international markets. Sixteen other countries followed within three months.

By the Winter of 1932-1933, most of the nations of the world had defaulted upon their obligations to the United States, had abandoned the gold standard, had imposed varying restrictions on foreign exchange, had directly or indirectly depreciated their currencies and had restricted their imports by exceptionally high tariffs. Such imports as were essential were, for the most part, purchased from countries such as England which was not on the gold standard and whose merchants could afford to sell at a lower price than could the merchants of the United States who had to purchase their raw materials and pay their labor in terms of gold.

During the years 1925-1929, the United States had annual exports of almost Five billion dollars ($5,000,000,000), but primarily because of the factors discussed above exports shrank in 1933 to $1,302,000,000 (World Almanac, 1938, at p. 309).

The inability to compete in foreign trade with countries not on the gold standard forced American merchants (1) to attempt to dispose within the United States of the surpluses which ordinarily would have been sold in foreign trade, and (2) to reduce production, which resulted in in-

creasing unemployment, curtailment of purchasing power and contraction of the domestic market. The surplus, in terms of available market, inevitably led to excessive competition, which drove domestic prices down in a vicious spiral. The wholesale price index of *all commodities* in the United States fell from 95.4 in 1927 to 65.9 in 1933 (World Almanac, 1938, at 358.[18]

Within the months immediately preceding the opening of the Seventy-third Congress, business was prostrate, due, in no small measure, to the enormous loss of foreign trade. The national income had shrunk to an alarming extent, with a proportionate and disastrous increase in the debt burden. Panic psychology existed throughout the land. There had been a great and growing increase in bank failures. Many of the banks, including many which were solvent, were on the verge of closing. Confidence in the monetary and financial systems of the country had been shaken. Gold in large quantities was going into hiding or in flight to foreign countries.

These are facts of common knowledge of which the Courts will take judicial notice (*Atchison, etc. Ry. Co.* v. *United States,* 284 U. S. 248, 260). They are established, moreover, by the statistical publications of Departments of the Federal and State Governments, and by the provisions and recitals of the several statutes, proclamations, executive orders and regulations which deal with the monetary measures of the Federal Government since March 4, 1933, reviewed at length in *Norman* v. *Baltimore & Ohio Railroad Co.*, 294 U. S. 240, at pages 295-297.

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[18]The wholesale price index for various commodities is tabulated in the World Almanac, 1936, at page 366, and it there appears that the decline in many commodities which had their principal markets abroad was even more serious.

It was in the light of these conditions that the Seventy-third Congress adopted the monetary legislation of 1933-1934. We will touch upon only so much thereof, and of the executive action thereunder, as is of particular interest here.

Specie payment was suspended and the payment, exportation or transfer of gold or gold bullion were in effect prohibited by executive action[19] on March 6, 1933. This action was ratified by the National Banking Emergency Relief Act of March 9, 1933 (48 Stat. at L. 1), and reinforced by said Act and executive action taken thereunder shortly after its passage.[20] The United States was thus temporarily off the gold standard, at least for the purpose of most transactions, and the dollar began to depreciate somewhat in foreign and domestic markets.

On May 12, 1933, the Agricultural Adjustment Act was passed (c. 25, § 43, 48 Stat. at L. 31, 51). Section 43 of that Act empowered the President to reduce the gold content of the gold dollar to any extent not less than 50% of its existing content *if he should find certain facts to exist.* The findings required by the Act were:

> "* * * that (1) the foreign commerce of the United States is adversely affected by reason of the depre-

[19]Proclamation of the President dated March 6, 1933 (48 Stat. at L. "Proclamations of the President", p. 1) pursuant to the Act of October 6, 1917 (c. 106, § 5, 40 Stat. at L. 415, as amended by the Act of September 24, 1918 (c. 176, § 5, 40 Stat. at L. 966)); Instructions by Secretary of the Treasury to Treasurer of the United States, dated March 6, 1933, approved by the President.

[20]Proclamation of the President dated March 9, 1933 (48 Stat. at L. "Proclamations of the President", p. 3); Executive Order No. 6073, March 10, 1933; Executive Order No. 6102, April 5, 1933; Executive Order No. 6111, April 20, 1933.

> ciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessarily in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments * * *."

Thus, the first purpose expressed by the Congress in authorizing devaluation was to protect the foreign commerce of the United States against depreciation in the values of foreign currencies. This purpose was referred to in *Norman* v. *Baltimore & Ohio Railroad Company*, 294 U. S. 240, at page 296, and was in fact one of those set forth in the Presidential Proclamation by which the dollar was devalued on January 31, 1934 (No. 2072, 48 Stat. at L. 1730).

The Joint Resolution was adopted June 5, 1933, and constituted a necessary step preliminary to devaluation.

That the Congress was acutely aware of the important connection between the Joint Resolution and the recapture of the American export market is illustrated not only by this review of the history of the times and the legislation in *pari materia* with the Resolution, but also by the debates on the Resolution itself.[21]

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[21]The subject of the relationship between the abandonment of the gold standard, American foreign trade, and the Joint Resolution was probably that most extensively discussed in the Congressional debates on the Joint Resolution. See, *e.g.*, the remarks of Senator Borah (77 Cong. Rec. 5003-5004 (June 3, 1933)) and of Senator Wheeler (77 Cong. Rec. 4996 (June 3, 1933)).

With this background in mind, we return to the question posed at the outset of this discussion: What response would Congress have made to a request that gold bonds of the character involved herein be excepted from the terms of its sweeping mandate?

With every confidence we assert that it would most emphatically have denied such request. We say this because, of all gold bonds, such bonds containing foreign currency provisions would have been *least* likely to have received or *merited* exceptional treatment from the Congress.

As we have already seen, such bonds are precisely similar in their effect on American obligors generally to bonds providing only for payment in dollars measured by gold. They must, therefore, have been regarded by the Congress as equally obstructive to its regulation of the currency. (See Point II (a), *supra.*)

Moreover, the foreign holders of such bonds, for whose convenience the gold value foreign currency provisions therein were inserted, were, by very force of circumstances, more favorably situated than American holders of single gold clause bonds. As previously pointed out, the very purpose of devaluation of the dollar was to permit American goods to be sold abroad at a reduction in the gold value price corresponding to the reduction in the gold content of the dollar. Foreign purchasers have benefited by the lower prices which devaluation made possible for American exports. There is no apparent reason why the Congress should have intended also to give them an advantage over American holders in the receipt of income from American bonds.

In any event, there is not the slightest evidence of any Congressional intent to discriminate in favor of either foreign holders or any other group of obligees.

Congress must also have recognized that, if obligations of this character were excluded from the Resolution, American producers, such as the petitioner, for whose primary benefit devaluation was authorized, would, by virtue of the fact that they were also obligors on such bonds, be deprived, wholly or in part, of the benefit of, and perhaps be penalized by, devaluation. Such obligors, as a result of devaluation, sell in foreign markets on the basis of the dollar of depreciated content and, therefore, receive fewer units of foreign currencies per sale than prior to devaluation. Consequently, payment of their multiple currency obligations on the basis prescribed in the Resolution merely tends to maintain the *status quo ante* devaluation. Payment on the old standard would, therefore, tend to place them at a greater disadvantage than prior to devaluation. It is fanciful to suppose that Congress intended to accomplish such a result, at variance with its intent as expressed in the Agricultural Adjustment Act and at odds with what may reasonably be believed to have been its desire to accord equal treatment to all debtors on dollar obligations.

In the light of the acknowledged purposes of the Congress and the all-embracing language of uniform application employed in the Resolution, the conclusion that the coupons in suit are subject thereto is, we respectfully submit, beyond dispute.

(c) One of the broad underlying purposes of the Resolution was to place all obligations payable in money of the United States, whatever their provisions for payment, upon a parity.

We have thus far concentrated upon a showing that Congress intended, *inter alia*, in adopting the Resolution t

provide a uniform method of discharge for all gold bonds payable in money of the United States, whatever their alternative provisions for payment. This emphasis has been proper because the narrow question here presented is whether Congress excepted a particular class of gold bonds.

The scope of the Resolution, however, is not so limited. One of the broad Congressional purposes in adopting it was to place upon a parity of discharge *all* obligations payable in money of the United States, whatever the provisions for payment contained therein. This intention is made articulate in the sweeping language of the second sentence of clause (a) of Section 1 of the Resolution.

The second sentence of clause (a) is the principal *enacting* portion of the Resolution. It states the goal that the Congress was attempting to reach, namely, that "every obligation" payable in money of the United States should be discharged upon payment, dollar for dollar, in legal tender. The Congress recognized that various types of provisions for payment contained in such obligations would, if enforced, prevent the attainment of that end. It singled out for express condemnation in the preamble and first sentence of clause (a) certain such provisions, including those then most common. But it was not obliged to make a census of all such provisions or specifically to enumerate the same (*Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U. S. 324, 340-341). This was particularly true since it was legislating for the future as well as the present. Accordingly, by the broad, all-inclusive language of the second sentence of clause (a), it prevented the enforcement in accordance with their terms, not only of those "provisions" which it had seen fit to enumerate specifically in the earlier portion of the Resolution, but of all "provi-

sions" calculated to have like effect, viz., to prevent discharge of obligations payable in money of the United States, dollar for dollar, in legal tender.

This reconstruction of the Congressional intent is the only one which gives effect to every word which the Congress employed in the Resolution, *i.e.*, which gives effect to what Congress *did* in the Resolution. It is also the only reconstruction consistent with its undoubted intention to formulate a general and lasting policy of uniform application which would prevent the recurrence in the future of situations obstructing the exercise of its power to regulate the value of the money of the United States.

If respondents' contentions herein be sustained, that policy may be rendered completely nugatory. As matter of routine, obligations may be so drawn as to hedge against further devaluation of the dollar by incorporating provisions for alternative payment in all foreign currencies which may be expected to enjoy or obtain a premium over the dollar in the event of devaluation. The Congress intended to leave no such loophole.

(d) Respondents' contention that serious constitutional questions will be presented if the Resolution is held applicable to the obligations in suit is unfounded.

Respondents below and petitioners in No. 384 (Pet. Br., 88 *et seq.*) have suggested that a construction of the Joint Resolution holding it applicable to the coupons in suit would raise grave doubts as to the constitutionality of the legislation. It is suggested that the Resolution, so construed, would go beyond the permissible limits of the authority delegated to the Congress in relation to the currency and contravene the Fifth and Tenth Amendments to the Constitution.

We think no lengthy discussion of these contentions is required and that the constitutionality of the Resolution as so applied is clearly established by the decisions of this Court in *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, and *Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U. S. 324.

The first ground on which the constitutionality of the Resolution is attacked is that "there has been no showing * * * that multiple currency clauses actually interfere with the exertion of the monetary power granted to Congress" (see Petitioners' Brief in No. 384, pp. 59, 91). Two points are made in this connection, first, that multiple currency provisions are found in less than 1% of the seventy-five billion dollars or more of gold clause dollar obligations, and, second, that no recitals specifically finding that such provisions obstruct the power of Congress over the monetary system are set forth in the preamble of the Resolution.

To this contention there are three answers:

(1) Whatever the percentage of gold clause dollar obligations which contain such provisions, they constitute an integral part of the class of gold bonds.

(2) Precisely the same argument as to the volume of obligations outstanding was expressly considered and rejected in Mr. Justice Cardozo's opinion for this Court in the *Holyoke Water Power* case (subheading 4 at p. 340 of 300 U. S.).

(3) As appears from this Court's opinion in the *Norman* case (at p. 311 of 294 U. S.), the question is not whether Congress made an express finding concerning clauses in obligations of the character in suit, but whether they "constitute an actual in-

terference with the monetary policy of the Congress in the light of its broad power to determine that policy". From the discussion which has preceded, it is perfectly plain that multiple currency clauses in gold bonds constituted an obstruction to the exercise of the Congressional power over the currency identical in character with the gold clauses in the obligations considered by this Court in the *Norman* and *Holyoke Water Power* cases.

The second constitutional challenge is predicated on the ground that the Resolution, if applied to the coupons in suit, would be extra-territorial legislation (see Petitioners' Brief in No. 384, p. 93). This contention has already been completely disposed of (Point I(d)).

Thirdly, it is contended (Pet. Br., pp. 61, 93), that the obligations in suit are commodity contracts and, as such not subject to regulation. This contention is not seriously pressed. The coupons are negotiable money contracts (Uniform Negotiable Instruments Law, § 1(2), § 6(5); *Incitti* v. *Ferranti et al.*, 12 N. J. Misc. 840, 175 Atl. 908; *Black* v. *Ward*, 27 Mich. 191; *King* v. *Hamilton*, 12 Fed. 478 (D. Ore.); *Hogue* v. *Williamson*, 85 Tex. 553, 22 S. W. 580; see *Brown* v. *Perera*, 176 N. Y. Supp. 215, 220 (not officially reported—aff'd without opinion, 182 App. Div. 922); *Hebblethwaite* v. *Flint*, 185 App. Div. 249, 173 N. Y. Supp. 81). Even if the multiple currency clauses be thought of as technically calling for commodities, the Resolution's constitutionality in its application to the obligations in suit is unquestionable The Resolution in terms applies to obligations payable in money of the United States containing gold bullion provisions and

has been sustained by this Court in its application thereto (*Holyoke Water Power Co.* v. *American Writing Paper Co., supra*). There exists no tenable distinction between this case and the *Holyoke* case. Foreign currencies partake no more of the character of ordinary commodities than gold bullion; and the fact that provisions calling for payment therein stand side by side in the same obligation with a provision calling for payment in money of the United States and obstruct the exercise of the power to regulate that money constitutes an adequate basis for Congressional jurisdiction.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted,

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